

Special Education Law Year In Review

Arizona Department of Education
Directors' Institute

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Child Find

- No violation of child find since the school never overlooked “clear signs of a disability” or lacked rational justification for its actions:
 - The school utilized general education interventions under an “RTI” plan
 - Section 504 plan with all requested accommodations
 - Procedural violation when it did not send written notice of refusal to evaluate when the parent requested sp ed services
 - No denial of FAPE since no loss of educational opportunity
- M.G. v. Williamson County School 6th Circuit Ct of Appeals (2018)

Child Find

- A child find violation occurs when the school overlooks clear signs of a disability and is “negligent” in failing to evaluate the student without a rational justification.
- The school acted reasonably in that it provided the student immediate support and accommodations when he first experienced problems.
- Initial decision of ineligibility upheld since his behaviors were not experienced “over a long period of time” as the IDEA definition of an emotional disturbance requires.

Mr. P. v. Hartford Board of Education 2nd Circuit (2018)

Child Find

- The parent requested a sped evaluation of their student who had been placed on a Sec.504 plan by their previous district.
- The parent did not return the consent for evaluation form for 3 months
- No violation of child find since being on a Sec.504 plan does not equate with a suspected disability under the IDEA
- School has rt. to assess the student based on its own staff observations and interventions

Panama-Buena Vista v. A.V. CA District Ct. (2017)

Child Find

- The school violated the provision by not initiating a special education evaluation when presented with an IEE concluding that the student had dyslexia and ADHD.
- In addition, the parents were not timely provided their procedural safeguards.
- No denial of FAPE since it was never established that the student was eligible for special education.
- Ct found that emails not maintained in “a physical folder or secure electronic data base” are not educational records under FERPA
 - Note: Not all legal authorities have agreed

Burnett v. San Mateo-Foster City 9th Circuit (2018)

Independent Educational Evaluation

- The parents requested an IEE based on the Team's determination that the student was not eligible
- The school initiated a DPH when it refused to pay for the IEE
- The Court found the school's evaluations were sufficiently comprehensive and consisted of multiple sources of info. and administered by qualified individuals
- No need for individual assessment reports to recommend or determine the student's eligibility since it is a Team decision

E.P. v. Howard County Public School System 4th Circuit (2018)

Eligibility

- A student diagnosed with ADHD who was on a Sec.504 plan was not eligible for IEP services when his academic performance significantly declined.
- The Court found that his poor work and grades were not due to his inability to concentrate but rather from the student neglecting his studies.
- The evidence based on multiple sources of information did not support his need for special education.

Durbrow v. Cobb County School District 11th Circuit (2018)

Eligibility

- The student was denied a FAPE due to inappropriate assessments and disability classification.
- The District violated the IDEA by limiting the student's eligibility to only her speech and language disability and not also her hearing impairment.
 - The Team considered only the disability category of deafness and did not consider the hearing impairment category
- As a result the goals in the IEP were insufficient to address all of the student's needs.

S.P. v. East Whittier City School District 9th Circuit (2018)

FAPE Standard

- The Supreme Court in the Rowley case established two criteria in determining FAPE:
 - Have the procedures been adequately complied with?
and
 - Is the IEP reasonably calculated to enable the child to receive educational benefits?

Hendrick Hudson School District v. Rowley (1982)

IEP Procedural Issues

(Decision Withdrawn—Rehearing)

- “Transition services” addressing the student’s move from private to public school were required to be included in the IEP.
- The LRE provision stating that the student would be in a “gen ed setting” as appropriate was too vague and improperly delegated the placement decision to teachers outside the IEP process.
- Methodology must be included in the IEP when “a particular methodology plays a critical role” in the student’s education.

R.E.B. v State of Hawaii 9th Circuit (2018)

Services in the IEP

- The IDEA requires that the IEP include “the anticipated frequency, location, and duration” of the special, related services and program modifications that the Team determines necessary to provide the student a FAPE.
- The IEP does not need to reflect the staff time necessary in order to prepare the modifications to the curriculum, instructional materials or tests that are necessary to implement the IEP.
- The Court stated “to hold otherwise would lead to impractical results”.

M.C. v. Knox County Bd of Ed TN District Court (2018)

FAPE and Educational Benefit

- The decision lays out a “general standard, not a formula” rejecting a “merely...more than de minimis” standard
- “A school must offer an IEP **“reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances”**.”
- An IEP is a collaborative effort between families and schools to develop a plan for “academic and functional advancement”
- The IEP Team must have a prospective judgment of the child’s circumstances based on a “fact intensive exercise”

Endrew F. v. Douglas County U.S. Supreme Court (2017)

Andrew F. v. Douglas County

- “...for most children, a FAPE will involve integration in the regular classroom and individualized special education calculated to achieve **advancement from grade to grade**”
- For those children not “fully integrated” in a regular classroom the IEP need not necessarily “aim for grade-level advancement” although the IEP must be “**appropriately ambitious** in light of his circumstances”.
- When a dispute arises a Court “may fairly expect that those [school] authorities be able to offer a cogent and responsive explanation for their decision” (emphasis added) to show that the IEP offered the child a FAPE.

Post Endrew Cases

- The parents wanted the IEP to incorporate “goals and objectives designed to teach [the student] about the laws and customs of Orthodox Judaism.”
- An IEP “reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.” is that the student is disabled, not that he is of the Orthodox Jewish faith
- The IDEA does not require an education that furthers a student's practice of his religion of choice.

M.L. v. Smith 4th Circuit (2017)

Assistive technology

- The Court held the school did not deny the student a FAPE by failing to conduct an AT assessment or provide an AT device before the parent notified it of a private assessment and use of an Ipad by the student.
- The evidence showed the student needed some foundational skills before being able to use an AT device successfully and was making “some progress” using nonelectronic devices.

E.F. v. Newport Mesa Unified Sch. Dist. 9th Circuit (2018)

“Location” Of Sp Ed Services

- The Court upheld the IEP even though it did not specify the school where the IEP would be implemented.
- Although the IDEA requires that the IEP include the “location” of sp ed services, "location" means the general setting in which the sp ed services will be provided and not a particular school or facility.
- However, not identifying a particular school in the IEP may at times result in denial of FAPE “especially when a child's disability demands delivery of special education services at a particular facility.”

Rachel H. v. Hawaii Dept. of Ed 9th Circuit (2017)

Least Restrictive Environment

- The LRE for a 2nd grader with a specific learning disability was a general ed setting except for language arts and math to be provided in a special education classroom
- The student was unlikely to receive any educational benefit from full time placement in a general education class.
- The student was far behind his peers in reading and math and had already received accommodations in the general education classroom that did not help him.

B.E.L. v. State of Hawaii Dept of Ed 9th Circuit (2018)

IEPs and Bullying

- The Court held the revised IEP properly addresses the severe bullying that the student had experienced in the past.
- The IEP included a full time one on one paraprofessional and a “crisis plan” that included a protocol should bullying occur.
- The Court rejected the argument that the IEP was required to include all the recommended actions in a guidance document issued by the United States Office of Civil Rights (OCR).
 - The IDEA specifically states that informal guidance letters issued by the U. S. Department of Education “are not legally binding”.

J.M. v. Matayoshi 9th Circuit (2018)

Disciplinary Removal Shortened School Days

- If a student with a disability repeatedly receives an “administratively shortened school day” to address behavior issues it may constitute a disciplinary removal which needs to be considered when evaluating whether a disciplinary change of placement occurs.
- Distinction made between an administrative decision and an IEP Team decision
 - A shortened school day determined by the IEP Team must be based on the student’s needs and not the school’s needs or attempts to circumvent the disciplinary provisions of the IDEA.

Letter to Mason U.S. Office of Sp Ed Programs (2018)

Disciplinary Actions

Basis of Knowledge

- The parent of a student on a Sec.504 plan asked for a special evaluation as a result of several behavioral incidents at the beginning of the school year.
 - Notice and Consent provided in English and Spanish
 - Consent was provided by the parent 4 mos. later
- The parent brought a DPH alleging the school failed to conduct a manifestation mtg. before suspending the student for more than 10 days since they had knowledge of a disability
- The Court held the “basis of knowledge” provision does not apply if the parent has not provided consent for the evaluation

A.V. v. Panama-Buena Vista Union Sch. Dist. CA Dist. Ct.
(2018)

Parent v. Adult Student Rts

- The parent initiated a due process hearing challenging the Team's decision that their student was not eligible
- While the hearing was pending the student turned 18 and expressed his desire to decline any sp ed services
- The Court upheld the dismissal of the parent's request by the ALJ since all IDEA rts transfer to the adult student.
Harris v. Cleveland City Bd of Ed TN District Court (2018)

Liability

- In reversing itself, the Court held that individual staff members cannot be sued in their individual capacities under the IDEA
- Given the language and intent of the IDEA and the lack of remedies against individual employees, alleged violations of the IDEA may be pursued against the school district and not employees in their individual capacities.

Crofts v. Issaquah School District WA District Ct. (2018)

Liability

- The parents of a student with Asperger's Syndrome complained of more than 30 incidents of bullying/harassment
 - School investigated each incident
 - When warranted, a corrective action plan was implemented
 - Referral made for criminal conduct
- The Court stated although the school “cannot be particularly proud of its response to the problem” the school was not liable since it was not deliberately indifferent as required for ADA/504 liability.

Bowe v. Eau Claire Area School District WI District Ct.(2018)

Section 504

- A kindergarten student with a speech impairment was subjected to another student's aggressive and sexual conduct
- The student victim was diagnosed with PTSD as a result
- The parents sued the school/staff under the ADA/504 alleging the school did not prevent or respond properly to the bullying
- The Court held no link was alleged between the bullying and the student's disability and therefore no discrimination under 504/ADA
- The Court did allow the allegation that the school failed to properly accommodate the bullied student under Sec.504 to proceed

Wormuth v. Lammersville Union Sch. Dist. CA District Ct.
(2018)

Retaliation Claim

- The principal sent a letter to a parent of a student with a disability stating that, due to his “aggressive and disruptive” conduct with staff, he had to contact the principal and obtain permission before coming to school
- No evidence that the parent was ever denied permission
- The Court held no violation of the ADA since there was no evidence that the procedure excluded him from participating in the school’s programs and activities.
- The procedure was reasonable in light of his “intimidating, aggressive, disruptive and angry behavior”.

Lagervall v. Missoula Cty. Public Schools MT Dist.Court (2017)

Retaliation Claim

- The school established a plan with a parent whose communication was described as “angry, aggressive and hostile” toward staff
 - Plan called for biweekly mtg with 3 staff members as sole means of communication other than in an emergency
 - Revised to limit communication with school solely through email when parent did not follow original plan
- No retaliation under Sec.504 since no evidence to link plan to his advocacy for his students under Sec. 504
- No free speech violation since the plan did not restrict the content of his speech but regulated how to communicate.

L.F. v. Lake Washington School Dist. District Ct. WA (2018)

Mahalo!!!!